

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ADEWALE OGUNYALE,

Plaintiff,

v.

**2:07 CV 52
(Maxwell)**

**WARDEN ESPARZA,
DR. WATERS,
DOMINIC GUTIERREZ SR AND
HEALTH ADMINISTRATOR BRESKOACH,**

Defendants.

ORDER

It will be recalled that on July 9, 2007, *pro se* Plaintiff Adewale Ogunyale, an inmate at FCI Morgantown in Morgantown, West Virginia, filed a civil rights complaint against the above-named Defendants.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.01 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. § 1915(e).

On June 27, 2008, United States Magistrate Judge John S. Kaull issued a Report And Recommendation/Opinion wherein he recommended that the Defendant's Motion To Dismiss Or, Alternatively, Motion For Summary Judgment be granted; that the Plaintiff's Bivens claims against Defendants Esparza and Gutierrez be dismissed with prejudice; that the Plaintiff's Eighth Amendment claims be dismissed with prejudice; that the Plaintiff's discrimination and due process claims be dismissed with prejudice; and that the Plaintiff's retaliation claims be dismissed without prejudice; and that, accordingly, the Plaintiff's Motion For Summary Judgment be denied.

In his Report And Recommendation/Opinion, Magistrate Judge Kaull provided the parties with ten (10) days from the date of service of said Report And

Recommendation/Opinion in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation/Opinion.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Kaull's June 27, 2008, Report And Recommendation/Opinion have been filed. The Court would note, however, that the docket in the above-styled action does reveal that the copy of Magistrate Judge Kaull's June 27, 2008, Report And Recommendation/Opinion transmitted by the Clerk's Office to the Plaintiff was returned on July 3, 2008, marked "Not Deliverable As Addressed - Unable To Forward. " While it is clear that the Plaintiff never received a copy of Magistrate Judge Kaull's June 27, 2008, Report And Recommendation/Opinion, the Court believes that this matter is still ripe for review in light of the fact that the Notice Of General Guidelines For Appearing Pro Se In Federal Court transmitted to the Plaintiff in this matter on July 10, 2007, expressly advises as follows:

Current Address: Keep the Court and opposing counsel, if any, advised of your most current address **at all times**. Failure to do so may result in your action being dismissed without prejudice.

Thus, the Plaintiff was clearly advised that it was his responsibility to apprise the Court in the event that he was released from incarceration or transferred to another facility.

Upon consideration of Magistrate Judge Kaull's June 27, 2008, Report And Recommendation/Opinion, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation/Opinion entered by United States

¹The failure of a party to file an objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

Magistrate Judge John S. Kaull on June 28, 2008 (Docket No. 28), be, and the same is hereby, **ACCEPTED** in whole and the above-styled civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Defendant's Motion To Dismiss Or, Alternatively, Motion For Summary Judgment (Docket No. 17) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Plaintiff's claims, be, and the same are hereby, **DISMISSED** As follows:

1. The Plaintiff's Bivens claims against Defendants Esparza and Gutierrez be, and the same are hereby, **DISMISSED with prejudice**;
2. The Plaintiff's Eighth Amendment claims be, and the same are hereby, **DISMISSED with prejudice**;
3. The Plaintiff's discrimination and due process claims be, and the same are hereby, **DISMISSED with prejudice**; and
4. The Plaintiff's retaliation claims be, and the same are hereby, **DISMISSED without prejudice**.

In light of the foregoing findings, it is further

ORDERED that the Plaintiff's Motion For Summary Judgment (Docket No. 24) be, and the same is hereby, **DENIED**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the

\$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* Plaintiff and to counsel of record for the Defendants.

ENTER: July 25, 2008

/S/ Robert E. Maxwell
United States District Judge